



W.P.(MD) No.20227 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2024

CORAM:

THE HONOURABLE **MR.JUSTICE D.KRISHNAKUMAR**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD)No.20227 of 2023

A.Syed Ali Fathima

... Petitioner

-Vs-

1.The Commissioner,
Aruppukottai Municipality,
Aruppukottai Town.

2.Town Planning Officer,
Aruppukottai Municipality,
Aruppukottai Town.

3.A.Sulaiman

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to take appropriate action as per his notice in ref in URC.No.8/23/AVI, dated 16.05.2023 issued under Sections 205(1) & (2), 216(1)& (2) and 339 (2) of Tamil Nadu Municipality Act.

For Petitioner : Mr.N.Sundaresan

For R1 : Mr.N.Dilip Kumar



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For R2 : Mr.S.P.Maharajan,
Special Government Pleader
For R3 : Mr.I.Suthakaran

ORDER

[Order of the Court was made by *D.KRISHNAKUMAR, J.*]

According to the petitioner, the 3rd respondent constructed the building and bore well by encroaching one foot in the four feet lane. Therefore, she made a petition to the 1st respondent to remove the said encroachment and thereafter, she made an application before the 1st respondent under RTI to know as to whether the 3rd respondent has obtained permission for construction. The 1st respondent vide proceedings dated 06.06.2023, informed the petitioner that there is no such building plan approval obtained from the authority concerned. Therefore, the 1st respondent issued a notice under Sections 205(1) & (2), 216(1)& (2) and 339 (2) of Tamil Nadu Municipality Act. Thereafter, no action has been taken. Hence, the petitioner is constrained to move the present Writ Petition.

2.The learned counsel for the 1st respondent submitted that necessary action would be taken for removal of the unauthorized construction put up by the 3rd respondent within a time frame stipulated by this Court.



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3. At this juncture, it would be beneficial to refer the Judgment of the Division Bench of this Court in **M.Rahamathunisha and others Vs. Commissioner, Greater Chennai Corporation, Chennai and another** reported in [2022 (6) CTC 145], wherein the Division Bench of this Court has held as follows:

'19. Applying the parameters laid down by this Court as well as the Hon'ble Supreme Court in the decisions mentioned supra to the present case, wherein, the petitioners sought an interim order forbearing the respondent authorities from taking coercive steps, so as to enable them to rectify and restore the subject building in consonance with the permissible planning rules and regulations, within a period of six months, this court is of the opinion that the practice of putting up an illegal construction and subsequently seek for regularisation or rectification should not be encouraged as it would give a wrong impression that a building can be unauthorisedly constructed and later, defects could be rectified. In such cases, the plea for regularisation or rectification should not be entertained either as a matter of course or routine and it should be considered sparingly and reasonably. If it is shown that an unauthorised construction has been put up, it should be ordered to be demolished, thereby indicating a strong warning signal to the perpetrators of such offences. It is trite law that the respondent



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authorities should take action for the services rendered to the public, whereas in the instant case, after so many litigations, at the instance of the complainant, who is the neighbour of the subject building, the officials have taken action in accordance with law. In many cases, they failed to do so promptly and appropriately; and the completion certificate issued by the authorities is, without proper verification of the actual status of the building, whether there is deviation / unauthorised construction.'

4.Further, in order to curb the unauthorized constructions, the Government has constituted a High Level Monitoring Committee and issued G.O(2D)No.15, Municipal Administration and Water Supply (MA.1) Department, dated 01.03.2024. As per the said Government Order, the Committee shall monitor the inspection of the unauthorized buildings.

5.In the light of the aforesaid decision, we direct the respondent Municipality to take necessary action for removal of the unauthorized construction put up by the 3rd respondent in accordance with law and complete the same within a period of twelve weeks from the date of receipt of a copy of this order.



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6. Accordingly, this Writ Petition stands disposed of. No costs.

[D.K.K., J.] & [R.V., J.]
26.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva

To

1. The Commissioner,
Aruppukottai Municipality,
Aruppukottai Town.
2. Town Planning Officer,
Aruppukottai Municipality,
Aruppukottai Town.



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